

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 26**

**CTS CAR TOP SYSTEMS, BOWLING  
GREEN, LLC<sup>1</sup>**

Employer

and

Case 26-RC-8403

**UNITED AUTOMOBILE, AEROSPACE,  
AGRICULTURAL WORKERS OF AMERICA,  
(UAW)**

Petitioner

**REGIONAL DIRECTOR'S  
DECISION AND DIRECTION OF ELECTION**

The Employer, CTS Car Top Systems, Bowling Green, LLC, manufactures open-air modular vehicle roof systems. The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act and seeks to represent a unit of about 24 production and maintenance employees at the Employer's Bowling Green, Kentucky facility. Following a hearing before a hearing officer of the Board, the Employer filed a brief with me.

The sole issue raised in the hearing is whether the present complement of 24 employees is a substantial and representative complement of the total anticipated workforce, which is expected to increase to 36 in June 2004. The Employer asserts the petition is premature and should be dismissed due to the anticipated hiring of 12 additional employees for a new product line. The Petitioner contends that the petition is timely and opposes its dismissal.

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<sup>1</sup> The Employer's name appears as amended at hearing.

I have considered the evidence adduced during the hearing and the arguments advanced by the Employer in its brief. As discussed below, I have concluded that the present complement of employees is substantial and representative since no new classifications will be added and the present complement constitutes at least 66 percent of the anticipated complement of employees in June 2004. Accordingly, I will not dismiss the petition and I have directed an election in a unit consisting of approximately 24 employees.

To provide a context for my discussion of this issue, I will first provide an overview of the Employer's operations. Next, I will discuss the Employer's current operations and its future plans. Then, I will present my analysis of the issue and the reasoning that supports my conclusions.

## **I. OVERVIEW OF THE EMPLOYER'S OPERATIONS**

The Employer manufactures, designs, and engineers roof systems for automotive applications. Its 36,000 square foot facility in Bowling Green, Kentucky was built to provide General Motors (GM) with automobile tops for two vehicles, the Cadillac XLR Roadster and the Corvette C-6. The XLR roof is a retractable hard top roof while the C-6 roof is a soft-top convertible roof made of fabric. The XLR production area is an open area in the center of the facility. The C-6 area, currently under construction, is adjacent and to the right of the XLR area. Both the XLR and the C-6 share the same "water test" booth to check for leakage in the roofs. The Employer began normal production of the XLR roofs in September 2003, but has not yet begun normal production of the C-6 roofs.

## **II. CURRENT OPERATIONS**

At the time of the hearing, 18 production employees and one trainer worked on the XLR line and 1 production employee and a trainer were assigned to the C-6. In

addition to the production employees, the workforce includes one shipping and receiving employee, two material handlers, one CMM operator, and one Quality Inspector.<sup>2</sup> Employees work on one shift that operates from 6 a.m. to 2:30 p.m. Monday through Friday and sometimes on Saturdays.

The first XLR roof was produced in December 2002 and was shipped to General Motors in January 2003. After a ramp-up stage, the Employer reached normal production in September 2003. The Employer has contracted with General Motors to produce 24 XLR roofs per day, but due to customer demand and availability of necessary GM-supplied components, normal production now is about 19 to 20 roofs per day. The Employer has the capacity to produce up to 28 XLR roofs per day, if it has the necessary components.

To assemble the XLR roof, employees use hand tools and cordless nut drivers. The pre-assembly for the XLR occurs at five stationary build bucks, which are fixtures built to the specification of the vehicles in the areas that relate to the Employer's product. After the pre-assembly, the roof goes through a process referred to as cubing, which involves a master gauge check fixture, and additional quality inspections.

With regard to the C-6, the Employer has removed a wall in the facility and is installing a conveyor system that should be completed by January 29, 2004. The C-6 area has one build buck, which is currently stationary, that is being evaluated to make sure it is capable of handling the components that will go on it. From November 2003 until the January 15 hearing, about 10 C-6 tops were produced. Most of those were shipped to GM shortly before the hearing.

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<sup>2</sup> The parties agree that, except for the two trainers who should be excluded, all these employees are appropriately included in a unit if an election is directed.

### **III. FUTURE PLANS**

By around May 2004, the Employer expects to have five build bucks on the C-6 line and to have added some automation equipment for the C-6 line. Production of the C-6 roof will be different from the XLR in two ways: (1) the five build bucks will be placed on the conveyor and will move to the parts, rather than the parts being brought to a stationary buck as occurs with the XLR; and (2) while the XLR employees work with a hard top, the C-6 production workers will have to stretch and adjust the soft fabric of the C-6 roof system in order to make it fit the frame of the top.

The Employer plans to have production-process capability for the C-6 in mid May 2004. It expects to start at a slow rate, about 10 roofs per week in mid May, and then increase to 10 roofs per day by late May. Production is then expected to accelerate to full production, 50 roofs per day, in June 2004. The Employer does not plan to adjust employees' hours when it increases production.

As the C-6 line ramps up to full production, up to four employees are expected to transfer from the XLR line to the C-6 line. The Employer intends to have some employees capable of transferring between the XLR and C-6 lines, but only employees who have been trained on both lines will be allowed to work on both lines. The Employer also expects to hire two additional employees each month from January through June, with the first two being hired by the end of January 2004. In all, the Employer expects to hire 12<sup>3</sup> additional employees. Therefore, in June 2004 its full complement of employees will be 36. The new employees will be classified as

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<sup>3</sup> Although in its brief, the Employer states there will be 14 employees on the C-6 line, that is the total number of employees expected to work on the line, not the number to be hired, which is 12.

production workers, the same classification as those currently working on the XLR line.

The Employer does not plan to add any new classifications.

The C-6 production employees will be trained in the same general manner as the XLR employees. During training, employees initially will be given an overview of the entire production process. Then, as employees develop an aptitude or preference for certain aspects of the production process, they will receive additional training in those areas. Training for the C-6 is expected to occur during February, March and April 2004.

The wage rate, benefits, and necessary skills for the C-6 production workers will be the same as those for the XLR production workers. The C-6 and XLR employees will utilize the same seniority list and will wear the same uniforms. The tools used by the C-6 production workers will be the same as those used by the XLR production workers except for minor variances because of differences in nuts and bolts.

When fully operational, the C-6 line will produce about 250 to 300 roofs per week (50 to 60 roofs per day times 5 days) and the XLR will produce about 100 roofs per week. Thus, when the C-6 is in full production, the C-6 roofs will constitute about 70 to 75 percent of the Employer's production.

#### **IV. ANALYSIS**

It is well settled that the Board will direct an immediate election, notwithstanding an employer's plan to expand its workforce, when the employer's current complement of employees is "substantial and representative" of the unit workforce to be employed in the near future. *Yellowstone International Mailing*, 332 NLRB 386 (2000). In making this determination, the Board has considered several factors such as the size of the present and expected employee complements, the time expected to elapse before the expansion, the number of existing and anticipated job classifications, and the certainty of the

expansion. See *Toto Industries (Atlanta), Inc.*, 323 NLRB 645 (1997). Although no flat rule has been adopted, in general the Board will find an existing complement of employees is substantial and representative when “approximately 30 percent of the eventual employee complement is employed in 50 percent of the anticipated job classifications.” *Yellowstone International Mailing*, supra at 386.

For example, in *Yellowstone International Mailing*, the existing complement of employees constituted 38 percent of the projected workforce and 100 percent of the ultimate job classifications were filled. The Board found this workforce constituted a substantial and representative complement sufficient to proceed with an election. In *Libbey Glass Division, Owens-Illinois, Inc.*, 211 NLRB 939 (1974), the Board reversed a Regional Director’s dismissal of a petition where the Director found that only 24 percent of the projected work force was employed and only 49 percent of the anticipated job classifications were filled. The Board reversed because by the time the Director’s decision and the Board decision issued, additional employees had been hired and new job classifications filled, raising the percentages to where a substantial and representative group was present. In *Toto Industries (Atlanta), Inc.*, supra, the Board agreed that an existing complement of over 50 percent of the anticipated employees was substantial and representative.

Here, the Employer currently employs 24 unit employees and anticipates hiring 12 more, creating a total of 36 unit employees by June 2004.<sup>4</sup> No new job classifications will be created; the new employees will be classified as production workers, just like the current employees. Thus, the current complement constitutes at least 66 percent of the

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<sup>4</sup> Since the Employer plans to hire two employees in January 2004, by the time an election is conducted, at least 26 and possibly 28 of the projected 36 employees will be employed.

projected workforce and occupies 100 percent of the ultimate job classifications. As such, I find the Employer's current complement of employees is "substantial and representative" of the unit workforce to be employed in the near future. *Yellowstone International Mailing*, supra.

In its brief, the Employer cites a number of cases where the Board has dismissed petitions because it found the complement of employees was not substantial and representative. These cases are factually distinguishable from the facts here. Thus, *Bryant Electric Co., Inc.*, 216 NLRB 933 (1975), *Slater System Maryland, Inc.*, 134 NLRB 865 (1961), and *Coast Pacific Lumber Co.*, 78 NLRB 1245 (1948) involved existing complements of employees that were potentially less than 30 percent of the ultimate employee compliment and involved the future hiring of a significant number of additional employees. That is not the situation here. As noted above, the current complement of employees will constitute at least 66 percent of the total workforce and the hiring of 12 employees will not significantly change the workforce complement.

The Employer also relies on cases where the Board dismissed petitions because of the anticipated creation of new job classifications, such as in *Some Industries Inc.*, 204 NLRB 1142 (1973), *Coast Pacific Lumber Co.*, supra, and *Lindsay Wire Weaving*, 116 NLRB 456 (1956). In these cases, the Board found that the increase in job classifications, in some instances doubling the number, would change the scope of the operation and warranted dismissal of the petition. That is not the case here where the Employer has acknowledged at hearing and in its brief, that there will be no new classifications. Therefore, a dismissal based on new job classifications is not warranted.

The Employer's reliance on *Trailmobile, Division of Pullman, Inc.*, 221 NLRB 954 (1975) is also misplaced. There, the Board reversed a Regional Director's decision to order an election at such a time in the future as the employer resumed operations with a substantial and representative complement of employees. There was no dispute that the employer's workforce at the time of the hearing was not a substantial and representative complement, as its normal workforce of 550 had been reduced by layoffs to 24 employees. The issue there was whether the petition should be dismissed or if special circumstances permitted directing an election at a future time. The Board found no special circumstances and dismissed the petition. Here, there is a substantial and representative complement now so there is no need to examine whether special circumstances exist that would warrant directing an election in the future.

The Employer also argues that the petition is premature because the C-6 line will constitute 75 percent of the facility's production when it is running. Since the employees on the C-6 line will be doing work similar to employees on the XLR line and will occupy the same job classification, I find the percentage of new product to be produced does not provide a basis for dismissing the petition.

Accordingly, I find the petition is not premature and I will direct an election in the agreed-upon unit.

## **V. CONCLUSION AND FINDINGS**

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction here.



3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

**INCLUDED:** All full-time<sup>5</sup> production and maintenance employees employed by the Employer at its Bowling Green, Kentucky facility.

**EXCLUDED:** All employees supplied by personnel services, office clerical and professional employees, trainers,<sup>6</sup> administrative assistant, engineers, material scheduler, guards, and supervisors,<sup>7</sup> as defined in the Act.

## **VI. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Automobile, Aerospace, Agricultural Workers of America, (UAW). The date, time, and

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<sup>5</sup> The record establishes that there is only one part-time employee, a student co-op, who appears to have a separate community of interest from the unit employees.

<sup>6</sup> In a post-hearing stipulation that I hereby receive into evidence as Board Exhibit 4, the parties agree that trainers Kal Kwetschlich and Andy Muller lack a sufficient community of interest with the employees in the unit and should be excluded from the unit. In agreement with parties, I will exclude the two trainers who are permanently employed by the Employer's parent company in Germany and are under contract to work at the Bowling Green facility on a temporary basis.

<sup>7</sup> The parties stipulated that the following individuals are supervisors under Section 2(11) of the Act: Plant Manager Mark Denny, Office Manager Felischa Page, Operations Manager Dan Newton, Quality Manager John George, Materials Supervisor J. Brian Thorpe, Team Leader XLR Udo Ve spa, Team Leader C-6 Jayson Passeno, and Team Leader Textiles Martin Schmelzle.

place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

#### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

#### **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with

them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before **February 5, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (901) 544-0008 or (615) 736-7761. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to

follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **February 12, 2004**. The request may **not** be filed by facsimile.

Dated at Memphis, Tennessee, this 29<sup>th</sup> day of January 2004.

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### Classification Outline

347-8020-2000

347-8020-2025-3300

347-8020-2025-6700

347-8020-4000